

§ 385.37

should be resolved on a case-by-case basis considering all factors that can be identified as relevant to decisions under the savings clause.

§ 385.37 Flood protection.

(a) *General.* In accordance with section 601 of WRDA 2000, flood protection, consistent with restoration, preservation, and protection of the natural system, is a purpose of the Plan.

(b) *Existing flood protection.* Each Project Implementation Report shall include appropriate analyses, and consider the operational conditions included in the pre-CERP baseline developed pursuant to § 385.35(a), to demonstrate that the levels of service for flood protection that:

(1) Were in existence on the date of enactment of section 601 of WRDA 2000; and

(2) Are in accordance with applicable law, will not be reduced by implementation of the project.

(c) *Improved and new flood protection.* The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida Ecosystem while providing for other water-related needs of the region, including water supply and flood protection. As appropriate, the Corps of Engineers and the non-Federal sponsor shall consider opportunities to provide additional flood protection, consistent with restoration of the natural system, and the provisions of section 601(f)(2)(B) of WRDA 2000 and other applicable laws.

§ 385.38 Interim goals.

(a) *Agreement.* (1) The Secretary of the Army, the Secretary of the Interior, and the Governor shall, not later than December 13, 2004, and in consultation with the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, and the South Florida Ecosystem Restoration Task Force, execute an Interim Goals Agreement establishing interim goals to facilitate inter-agency planning, monitoring, and assessment so as to achieve the overarching objectives of the Plan and to provide a means by which the restora-

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tion success of the Plan may be evaluated, and ultimately reported to Congress in accordance with § 385.40 throughout the implementation process.

(2) After execution of the Interim Goals Agreement, the Department of the Army shall memorialize the agreement in appropriate Corps of Engineers guidance.

(b) *Purpose.* (1) Interim goals are a means by which the restoration success of the Plan may be evaluated at specific points by agency managers, the State, and Congress throughout the overall planning and implementation process. In addition, interim goals will facilitate adaptive management and allow the Corps of Engineers and its non-Federal sponsors opportunities to make adjustments if actual project performance is less than anticipated, including recommending changes to the Plan. Interim goals are not standards or schedules enforceable in court.

(2) The interim goals shall:

(i) Facilitate inter-agency planning, monitoring and assessment;

(ii) Be provided to the independent scientific review panel established in accordance with § 385.22(a);

(iii) Be considered in developing the Master Implementation Sequencing Plan, Project Implementation Reports, and Comprehensive Plan Modification Reports; and

(iv) Be considered in making budgetary decisions concerning implementation of the Plan.

(3) To ensure flexibility in implementing the Plan over the next several decades, and to ensure that interim goals may reflect changed circumstances or new information resulting from adaptive management, the interim goals may be modified, consistent with the processes set forth in paragraph (d) of this section, to reflect new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the assessment principles contained in the Plan; and future authorized changes to the Plan integrated into the implementation of the Plan.